

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

50277-1512

Pursuant to 37 CFR 1.8(a)(1)(ii) I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office via the electronic filing system in accordance with 37 CFR §§1.6(1)(4) and 1.8(a)(1)(i)(C) on the date indicated below and before 9:00 PM PST.

Application Number

09/872,234

Filed

May 31, 2001

Electronically filed on June 18, 2008Signature /MalgorzataAKulczycka#50496/

First Named Inventor

Dean Tan, et al.

Typed or printed

name Malgorzata A. Kulczycka

Art Unit

2193

Examiner

William H. Wood

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the



applicant/inventor.

/MalgorzataAKulczycka#50496 /

Signature



assignee of record of the entire interest.

Malgorzata A. Kulczycka

Typed or printed name

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)



attorney or agent of record.

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Telephone number



attorney or agent acting under 37 CFR 1.34.

June 18, 2008

Registration number if acting under 37 CFR 1.34

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.

Submit multiple forms if more than one signature is required, see below*.



*Total of 1 _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Confirmation No.: 2418

Dean TAN et al.

Group Art Unit: 2193

Serial No.: 09/872,234

Examiner: William H. Wood

Filed: May 31, 2001

For: TECHNIQUES FOR AUTOMATICALLY INSTALLING AND
CONFIGURING DATABASE APPLICATIONS

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

ATTACHMENTS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

The following clear errors occur in the currently maintained rejections of the
Advisory Action mailed May 30, 2008:

**I. The Rejections of claims 1-21 and 23-43 under 35 USC 103(a) as being
unpatentable over Aronberg, in further view of Bigus are based on a
clear technical error.**

The claim's rejections are based on a clear technical error. The technical error is
that the Advisory Action is confusing the **installation** of software with the **tuning** of
software. This error is clearly evident from the statement in the Advisory Action that
"Bigus discloses **installing** software on a system based upon gathered information from
that system (column 1, lines 38-49)," and the fact that in column 1, lines 38-49, Bigus
describes:

The concept of “tuning” seeks to improve service levels by adjusting existing resource allocations. Doing so requires access to metrics and to the controls that determine resource allocations. In general, there are three classes of metrics: (1) “configuration metrics” that describe performance related features of the target that are not changed by adjusting tuning controls, such as line speeds, processor speeds, and memory sizes; (2) “workload metrics” that characterize the load on the target, such as arrival rates and service times; and (3) “service level metrics” that characterize the performance delivered, such as response times, queue lengths, and throughputs.

Thus, the Advisory Action erroneously treats Bigus’ description of what is clearly **tuning** of already installed software as if it were “**installing** software on a system based upon gathered information from that system.” This error has resulted in faulty rejections.

II. The Rejections of Claims 1-21 and 23-43 under 35 USC 103(a) as being unpatentable over Aronberg, in further view of Bigus are based on a clear factual error.

The claim’s Rejection is also based on a clear factual error. The Advisory Action alleges that Aronberg in view of Bigus teaches the limitations of claims 1-21 and 23-43. This is incorrect.

Neither prior art reference discloses, or in any way suggests “**downloading, from the server, a customized value for a configuration parameter to be used [...] to configure [...] the database application when the database application is executed on the device, to determine how the database application allocates resources on the device, wherein the customized value was determined by the server based on the resource information sent by the device [...] to the server.**” As discussed above, Bigus is about tuning of already installed software (Bigus: column 1, lines 38-49), not about installing software, as claimed. Further, the tuning performed in Bigus is performed based on post-installation metrics (Bigus: column 1, lines 37-64), not based on a

customized value parameter determined by the server based on the resource information sent by the device to the server before the installation, as claimed.

Aronberg is about **installing** software on a device. However, in Aronberg, the software is not installed on the device with “**a customized value for the configuration parameter [...] that is determined by the server based on the resource information sent by the device.**” To the extent that the installations in Aronberg are customized in any way, they are customized based on whether the user has manually specified the installation type (i.e. a complete installation, a minimum installation, a typical installation or a workstation installation). Therefore, how the software is configured is determined by the user, not the server. Further, what it is determined based on depends on the user’s personal preferences, not on the information specifically received by the server from the client about what resources are available at the client site.

Throughout the pendency of this application, please charge any additional fees, including any required extension of time fees, and credit all overpayments to the deposit account 50-1302.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP

Dated: June 18, 2008

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